

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

EBONY MCCLENDON,	:	Case No. 1:20-cv-169
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	
vs.	:	
	:	
BEST BUY a/k/a BEST BUY STORE,	:	
LP,	:	
	:	
Defendant.	:	

**ORDER DISMISSING THIS CASE  
WITHOUT PREJUDICE**

This civil action is before the Court on Plaintiff Ebony McClendon’s (“Plaintiff”) motion to dismiss pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure (the “Motion”). (Doc. 6).

In the Motion, Plaintiff “moves the court for an order dismissing the claim filed by the Plaintiff without prejudice, and allow[ing] the Plaintiff to refile the claim in State court.”<sup>1</sup> (*Id.* at 1). Defendant Best Buy a/k/a Best Buy Store, LP (“Defendant”) has not filed a response in opposition to the Motion.

On the Court’s review, Plaintiff is not entitled to relief under Rule 41(a)(1). Fed. R. Civ. P. 41(a)(1). Rule 41(a)(1) provides that a Plaintiff may dismiss an action, without a court order, by filing either: “(i) a notice of dismissal before the opposing party serves

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<sup>1</sup> The Court notes that, while Plaintiff uses the word “claim,” it would have been more appropriate to use the word “case,” as Plaintiff’s Motion plainly seeks the dismissal of this action in its entirety. (*See generally* Doc. 6).

either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(i)-(ii).

Here, Defendant has filed an answer to Plaintiff’s complaint. (*See* Doc. 5). As such, Plaintiff cannot obtain dismissal under subdivision (i). Fed. R. Civ. P. 41(a)(1)(A)(i). Moreover, Plaintiff’s Motion is not signed by all parties who have appeared. (*See* Doc. 6). As such, Plaintiff cannot obtain dismissal under subdivision (ii). Fed. R. Civ. P. 41(a)(1)(A)(ii).

Given these deficiencies, the Court could deny Plaintiff’s Motion outright. (Doc. 6). However, in the interest of fairness, the Court concludes that the more appropriate course of action is to construe Plaintiff’s Motion as a motion filed under Rule 41(a)(2). *Accord Pennington v. Lake Local Sch. Bd. of Educ.*, 257 F.R.D. 629, 630 (N.D. Ohio 2009) (construing a Rule 41(a)(1) notice as a Rule 41(a)(2) motion “in the interest of fairness”).

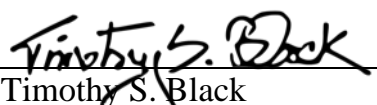
Rule 41(a)(2) provides that, at a plaintiff’s request, a court may dismiss a case “on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2).

Here, as Plaintiff has moved the Court to dismiss this case without prejudice (albeit under the wrong Rule), and as Defendant has not filed a response in opposition to Plaintiff’s motion, the Court concludes that Plaintiff’s requested relief (a dismissal without prejudice) is appropriate. (*See generally* Doc. 6).

Based upon the forgoing, this case is hereby **DISMISSED** without prejudice. The Clerk shall enter judgment accordingly, whereupon this case is **TERMINATED** upon the docket of this Court.

**IT IS SO ORDERED.**

Date: 12/14/2020

  
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Timothy S. Black  
United States District Judge